IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 260 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil Judge? No

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KOTHARI JAYANTILAL RAMJI

Versus

STATE OF GUJARAT

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Appearance:

MR NALIN K THAKKER for Appellant

Mr. Mankad A.G.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE B.C.PATEL and

` MR.JUSTICE C.K.BUCH

Date of decision: 22/12/98

ORAL JUDGEMENT(Per: Patel.J)

#. The appellant being aggrieved by the order passed by the learned Single Judge in SCA No.1244 of 1989 has preferred this appeal. It appears that as contended by the appellant,he was allotted space for cabin near Vaniavad Naka at Bhuj. Same was removed by the Sub-Divisional Magistrate exercising his powers under the Cri. Proc. Code. It appears that as the appellant came to know that action is to be taken he has approached the court learned Civil Judge(SD), Bhuj by filing Regular Civil Suit oNo.452 of 1988 for injunction restraining the defendants from dispossessing the appellant illegally or forcibly or demolishing the cabin of the appellant. The learned Civil Judge directed to maintain status quo. However, before the order could be passed, the cabin was demolished. Thereafter, present petition was filed for a prayer to direct the respondents to reconstruct the cabin of the petitioner bearing Municipal Shop No. 3/1/16 situated near Vaniawad Naka at Bhuj at the costs of the respondents. The learned Single Judge held that it is not the case of the petitioner that the lease period is continued after March 31, 1989 and that the petitioner has not stated specifically as to what damage was caused to him for the loss of his business. The learned Single Judge further came to the conclusion that no such damage can be assessed while exercising jurisdiction under Article 226 of the Constitution of India. The learned Single Judge therefore, was of the opinion that the petitioner should be left to civil remedy if at all available. With the above observations Rule was made absolute to that limited extent.

#. The Division Bench of this Court (Coram: S.B.Majmudar & V.H.Bhairavia.JJ), in Civil Application No.1657 of 1989 granted ad-interim relief in terms of para 3A. Said para 3A reads as under:

> "to issue an interim direction to respondents not to restrain the applicant from putting up his cabin at a place bearing Municipal Shop No. 3/1/16 situated near Vaniavad Naka at Bhuj in working condition and to allow the applicant to carry on his business in the said cabin"

#. The learned Single Judge has pointed out the procedure to be followed. The learned Single Judge has also observed that no show cause notice was given to the petitioner before demolishing the cabin and the petitioner had produced relevant evidence before the Trial Court to show that he was in lawful possession of the said cabin. The learned Judge, however, expressed an

opinion to the effect that the appellant was in possession of the cabin in view of the order passed by the Trial Court. However, the insistence of the petitioner at the relevant time was that he was in possession of the cabin which was demolished and the same should be rebuilt at the costs of the respondents. The learned Single Judge has also pointed out that the court has to consider as to whether the petitioner can be said to be the lessee of the property and could have lawfully made the construction. The learned Single Judge expressed an opinion that as the lease period was over, it cannot be said that he had a right to make any construction.

#. However, in view of the order, the constructions is made bythe appellant. Since then, he is carrying on business at that place. Therefore, in a disputed question of fact, once the learned Single Judge has held that it would not be proper to decide as to what damage has been suffered by the appellant, it would not be proper for this court to interfere with the order passed by the learned Single Judge. Suffice it to say that if any action is required to be taken, the same can be taken after hearing the petitioner. It goes without saying that not only the municipality but the appellant should have been heard before any action is taken. In view of this we do not find any reason to interfere with the order passed passed by the learned Single Judge which is impugned in this appeal more particularly when the appellant is directed by the learned Single Judge to approach the Civil Court for claiming damages. The learned advocate for the appellant has very frankly stated that the appellant is carrying on business at that place since long and after the order there is no interference and he is left with this situation. In view of this also we would not like to interfere with the order passed by the learned Single Judge. Therefore, the appeal is dismissed.

However, we clarify that as the construction is already carried out by the appellant in view of the order passed by the Division Bench of this Court, same cannot be disturbed without following the procedure in accordance with law.

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